

Due Process: A Primer for Special Education Teachers

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Abstract

The threat of special education due process has set the tone for the way IEP meetings are conducted and IEP decisions are made. This threat has eroded relationships and trust between families and district personnel. This article reviews the background, history and current status of special education due process and offers suggestions to teachers about how their work can help restore the much needed trust that is the bedrock for all the primary relationships assisting students in need of special services.

The effects of litigation in special education cases are too often destructive, affecting students, parents and teachers with long-lasting negative consequences. According to a pilot study conducted by Public Agenda in 2003, superintendents and principals report that special education issues are the most frequent cause for educational litigation. Special education administrators choose either to stand up to these due process challenges and litigate, which results in expense in money and time, or they choose to take the easier and initially less expensive alternative of settlement.

When PL 94-142 became part of the fabric of public school education in 1975, it was expected that IEP team decisions occasionally would be challenged. Disputes would arise over issues about classification

and placement. Today, however, we see an entirely new use of special education due process litigation. Procedural mistakes often lead to large settlements that have little to do with appropriate educational programs. Parents find private schools promising special programs and treatment and remove their children from the public school. After a unilateral placement in a special private school, parents expect to be reimbursed for tuition by the public school for their legal action. This new wave of litigation activity has changed the way IEP teams make decisions; it dictates the way they document information and it lurks in the shadows of every IEP meeting. Too frequently litigation interferes with or impedes the process of educating a child. When did IEP teams move away from putting their efforts into child-centered decisions to thinking about avoiding being sued? The Public Agenda (2003) survey documents the reality that educators perceive parents having a sense of educational entitlement based on special education law which increases the likelihood of litigation.

What are the implications for today's teachers? The bond between families and teachers working with students with disabilities is still the key to achieving the goal of providing a free appropriate public education. Now is the time for all responsible parties to realize that no one wins in a special education due process hearing and that the best way to win for children is to avoid disagreement, resolve differences and find solutions.

The design of a child's educational program is a collaborative process. Collaboration begins at the IEP meeting with unanimous commitment to respect each participant as a sincere, honest and dedicated member working towards designing an appropriate education. If we agree to establish safeguards, to follow the same rules and guidelines, to stop looking for fault and personal gain, then we can avoid frivolous litigation and increase the effectiveness of services for children.

Recent changes in IDEA (IDEIA'04, P.L.108-446) require parents to state their complaints and provide an opportunity for the district to resolve issues at a new IEP meeting. It is recommended that the district initiate a pre-meeting with the parents to discuss issues and possible solutions to bring to a new IEP meeting. Teachers can assist in this step by providing concrete information about what works or does not work for this student. They should include work samples of success and areas of need.

Mediation is still not required as a step preceding litigation in the reauthorized IDEIA, but when mediation is used both parties should agree that it will be "legally binding". Mediation is less contentious than due process and is a way to work through differences and arrive at a compromise with less expense in time and money. Every effort should be made, therefore, to consider mediation seriously as a step that could well avoid litigation.

Trust and meaningful communication with parents are the foundation of change in this due process cycle. When teachers and administrators avoid contact with parents who have initiated due process, they only exacerbate negative feelings and mistrust. A strong line of communication must remain open with equal access for parents and teachers. Teachers should make every effort to remain focused on the education of the student and work on maintaining a good working relationship with the parents. Teachers can and should be the educational ambassadors who open a healthy dialogue between school and home.

All educators involved with the child need to understand the issues in dispute and be consistent among themselves in their approach and communication with parents. Team members need to attend all meetings, be prepared and informed with updates on the student's status, and be able to suggest possible changes. It is important that teachers understand how their role relates to other professionals

on the team. Any differences of opinion that may exist within the team should be discussed and resolved before the meeting so that all sides can feel comfortable with suggested recommendations.

All team members must take the remarks and information from parents seriously without appearing defensive. When reviewing reports presented by parents, team members need to articulate their own expert opinion using specific information that will either support or dispute the parents' position.

When parents bring an outside expert to the IEP meeting it is important for the educational staff to engage that person in a comprehensive discussion. It is helpful to have the experts inform the committee of their findings and recommendations. Having the opportunity to hear and discuss the perceptions from outside professionals will help school professionals gain important insight into the parent perspective. The teachers in attendance should never feel intimidated by the outside expert. Teachers need to be honest with their remarks and support their comments with specifics.

Teachers and related service providers will need to be prepared to present a comprehensive current educational status report. This report is most effective when it includes work samples with teacher comments and recent anecdotes from classroom activities. At least one current observation conducted by a team member should be included to support important anecdotal information from the current placement. When reporting this information the staff will need to be honest and straightforward with clear comments about educational gains or the lack of progress. Staff should always support their recommendations with scientifically based methods of instruction. The wealth of supportive information should be shared generously with the parents.

The student's special education file is very important and, of course, confidential. It needs to be up-to-date, well organized, and accessible to the parents and staff upon request. This requires ongoing attention regarding professional notes, assessments, classroom tests and reports.

Occasionally a meeting is in progress and parents comment that they are in serious disagreement and try to stall the process. It is important for the IEP team to consider such comments with respect and make every effort to complete writing an appropriate IEP or make clear that the meeting will be rescheduled.

When surprised by the unannounced presence of an attorney representing the child, the IEP team should proceed with caution. School district representatives have a right to reschedule a meeting to include their own legal representative. Under no circumstance should teachers begin to discuss the child before the official opening of the meeting by the designated chairperson.

Current changes in IDEA (IDEIA '04, P.L.108-446) have made a mild attempt to alter procedural safeguards. These changes require that either party seeking due process must submit a formal complaint that includes a description of the problem, the facts relating to the problem and a proposed resolution. It is expected that a meeting will be convened to resolve the dispute unless both parties agree to waive the meeting.

Additional IDEIA changes help prevent procedural mistakes from clouding programming issues and decisions. Hearing officers must decide the cases on substantive grounds related to the child's receiving a free appropriate public education (FAPE).

It can no longer be expected that school districts have deep pockets and that they will be held hostage to an imperfect ability to cope with attorneys trying to seize a financial opportunity for their clients and

themselves. A free appropriate public education for all students with disabilities is obtainable when the special education staff and parents work together to find solutions instead of litigating differences.

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